



THE ETHICS STANDARD

The Office of General Counsel

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Secretary Jackson Confirmed and Renews Commitment to Ethics



On April 1, 2004, Secretary Jackson was confirmed by the Senate as the thirteenth Secretary of the

Department of Housing and Urban Development. In carrying out President Bush's mandate to maintain the highest standards of integrity in government, Secretary Jackson renewed his commitment for a strong ethics program at HUD. In pronouncing his message to *The Ethics Standard*, the Secretary pointed out that, "we all share certain basic obligations as Federal employees. We must put forth an honest effort in the performance of our duties, we must deal with others in a fair and respectful manner, we must be mindful that public service is a public trust and be good stewards of the taxpayers'

money, and we must be accountable for our actions in public service. Additionally, we are obligated to abide by all applicable ethics rules and principles. We must also know where to turn when we need advice on ethics matters. For this reason, as Secretary, I will continue to encourage HUD employees to stay on the right path and vigilantly pursue the highest standards of conduct in performing their jobs. If we all uphold high ethical standards, we will enhance the Department's reputation as an agency that is competent, trustworthy and that truly cares about people.

Senate Hearings Held for Presidential Nominees

On April 21, 2004, the Senate Committee on Banking, Housing, and Urban Affairs held a hearing on the nominations of Roy A. Bernardi, for Deputy Secretary; Dennis Shea, for Assistant Secretary for Policy, Development and Research; and Cathy MacFarlane, for Assistant Secretary for Public Affairs.

HUD Employees Prohibited From Participating in a Real Estate Business



The HUD Supplemental Standards of Conduct regulation regarding prohibited outside employment applies to all HUD employees, except special Government Employees. See 5 C.F.R. § 7501.105. This regulation prohibits all employees from actively participating in a business dealing with or related to real estate.

What exactly is a business dealing with or related to real estate?

A real estate business may include real estate sales, property management, appraisal services, or even mortgage lending. A real estate business usually does not include activities designed to enhance a

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Prohibited From Participating in a Real Estate Business
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property for the benefit and enjoyment of an individual homeowner, such as an interior designer or even a professional organizer.

However, a HUD employee may not decorate model homes or apartments for builders or developers because the interior design work would facilitate the sale or lease of real estate.

How do you determine what constitutes active participation in a business?



There are several factors that are significant for determining when an employee is actively participating in a business. These include: maintaining an office; advertising or otherwise soliciting clients or business; hiring staff or employees; using business stationery or other similar materials; filing your business as a corporation, limited

liability company, partnership, or other type of business association with your state government; or even establishing a formal or informal association with an existing business. In most cases, engaging in one of these activities would be considered active participation in a business. HUD employees may not advertise their services in any way, engage in transactions involving multifamily properties, engage in more than two transactions a year, or participate in a transaction involving any HUD program, including programs related to FHA insurance.

HUD Employees Cannot Represent Others to the Federal Government

Did you know that HUD employees, other than in the performance of their official duties, are prohibited from representing others in matters involving the Federal government? A Federal criminal statute, 18 U.S.C. § 205, makes it illegal for any government employee to act “as agent or attorney for anyone before any department, agency, [or] court” in connection with any matter in which the United States is a party or in which it has a direct and substantial interest – unless it is their official duty to do so. The underlying principle of this law is that Federal employees must place loyalty to the Federal government above any private interest, and that they therefore cannot take the side of an outside organization or individual by representing them in a matter involving the government. Violation of this statute may result in imprisonment up to one year (five years for a willful violation) and a fine

of up to \$50,000, in addition to other civil or administrative penalties.

What type of conduct is prohibited? This statute essentially bars a Federal employee from “private representation”: that is, from agreeing to represent someone else before any court, department, agency, or similar forum in which the Federal government is involved or has an interest. This means, for example, that if you have a friend who is involved in a dispute with the Internal Revenue Service (“IRS”), you cannot call the IRS on behalf of your friend to try and help out, or accompany your friend to a meeting with IRS officials to act as your friend’s spokesman. Additionally, under this statute, a HUD employee cannot agree to represent an outside organization in obtaining a grant from HUD or from any other governmental department or agency. This prohibition extends to representing parties in connection with any program or benefit of the Federal government, including Federal grants and contracts, Medicare benefits, immigration matters, Federal criminal justice matters, or any other matter

in which the Federal government is a party or has a “direct and substantial interest.”

Are there any exceptions? Yes. First, this statute does not restrict you from performing your official duties, or from giving sworn testimony as a factual witness in a court or similar proceeding. The statute also does not bar you from representing yourself, your parents, spouse, or child. You may also represent, without compensation, any person who is the subject of disciplinary, or other personnel administration proceedings in connection with those proceedings only. The statute also permits Federal employees to represent a group composed of predominantly Federal or District of Columbia employees or their family members (such as an employees’ labor union or credit union), provided that representation does not conflict with their official duties.

If you are uncertain as to whether 18 U.S.C. § 205 might apply to a particular matter, please contact either the Ethics Law Division or your Regional Counsel’s office for advice before proceeding.

Know Your Agency Ethics Officials

The Department has 15 Agency Ethics Officials who are authorized to provide counseling on ethics issues. Five are located in Headquarters and one in each regional office. The following list will be useful to you.

Headquarters



Sam E. Hutchinson
Associate General Counsel
Human Resources Law
(202) 708-0888

Headquarters

(AEO)

Richard A. Hauser
General Counsel/DAEO
(202) 708-2244

George L. Weidenfeller
Deputy General Counsel
(Alternate DAEO)
(202) 708-2864

Paula A. Lincoln
Assistant General Counsel
Ethics Law Division
(202) 708-3815

Kenneth M. Donohue
Inspector General
AEO for OIG
(202) 708-0430

Alfred M. Pollard
General Counsel, OFHEO
AEO for OFHEO
(202) 414-3800

Field

Region I
Miniard Culpepper
(617) 994-8250

Region VI
William J. Daley
(817) 978-5990

Region II
Henry Czauski
(212) 264-8000

Region VII
Thomas Coleman
(913) 551-5478

Region III
Ann Harrison
(215) 656-0639

Region VIII
Ellen P. Dole
(303) 672-5409

Region IV
Donnie Murray
(404) 331-5001

Region IX
R. Faye Austin
(415) 436-8218

Region V
Courtney Minor
(312) 353-6236

Region X
David Morado
(206) 220-5413

Can I Volunteer My Services?



Give The Gift of Time!

Have you considered serving on your local school council, working at a soup kitchen on the weekends, or even providing pro bono legal ser-

vices? The Department encourages HUD employees to volunteer their personal time to non-profit organizations, subject to certain restrictions. The HUD Supplemental Standards of Ethical Conduct Regulation at 5 C.F.R. § 7501.105(c) requires HUD employees to obtain prior approval for volunteer activities that may create a conflict of interest. This includes: (1) serving as an officer, director, trustee or general partner or any other position of authority with either a for-profit or non-profit organization that receives assistance from the Department; (2) working with a state or local government; or (3) working in the same professional field. For example, if you work as an

attorney at HUD and would like to provide pro bono legal services at a bankruptcy clinic, you must obtain prior approval from your Agency Ethics Official. Also, you must obtain prior approval if you would like to serve on your local county's task force for a particular issue, or run for a non-partisan office with a state or local government. These rules apply whether the position is paid or unpaid. Also, when considering possible volunteer activities, please keep in mind that HUD employees are prohibited from participating in outside activities dealing with or related to real estate, pursuant to 5 C.F.R. § 7501.105.

It's Election Time: What Can I Do?

As we enter the 2004 national election cycle, it is important for Federal employees to be aware of the permissible and prohibited political activities. The Hatch Act permits the majority of Federal employees to participate in most campaign-related activities, subject to certain restrictions addressed below. Federal employees who violate the Hatch Act may be subject to suspension without pay or permanent removal from Federal employment. Therefore, we strongly recommend that all HUD employees diligently observe the Hatch Act's restrictions on political activities.

What are permissible political activities?

Most Federal employees may participate in voter registration drives, attend and speak at political fundraisers, partake in political rallies and meetings, assist in organizing a fundraiser for a partisan candidate, and even contribute money to political organizations, in compliance with Federal campaign finance statutes and regulations. The Hatch Act also permits most Federal employees to engage in election day activities as well. These include serving as an election judge or poll

watcher, or working for a candidate or political party by observing the voting process.

What are the restrictions when participating in political activities?

There are several restrictions to keep in mind. First, Federal employees may not solicit, accept, or receive financial contributions for a political candidate or party. However, there are some exceptions that apply to members of Federal labor organizations. The restriction of solicitation for political contributions applies even when you are away from work and on your own time. Second, Federal employees cannot use their official position or authority to influence an election. Third, Federal employees may not participate in partisan political activity while on duty, on Federal premises, or in a government vehicle. This means, for example, that you may not wear a partisan political button while on duty or in a Federal workplace, or engage in any "electioneering" activities. This includes handing out political leaflets or brochures, and displaying partisan political posters or other campaign materials in your office. Finally, Federal employees generally are barred from running for public office in a partisan election—that is, one in which any candidate is running as the representative or nominee of a political party.

Are there additional restrictions for certain senior HUD officials?

The restrictions listed above apply to all Federal employees. HUD employees who are career members of the Senior Executive Service, Administrative Law Judges, as well as Contract Appeals Board members are subject to more extensive restrictions. Consequently, they may not work on campaigns where any of the candidates are running as representatives of a political party, e.g. the Democratic or Republican parties. However, they may contribute money to political organizations, attend political fundraising functions, attend political rallies and meetings, join political clubs or parties, sign nominating petitions, and campaign for or against referendum questions, constitutional amendments, and municipal ordinances.

Where can I get additional information?

The Office of Special Counsel has a website with extensive information regarding the Hatch Act at: <http://www.osc.gov/hatchact.htm>. Additionally, you can seek advice about permissible and impermissible political activities either from your regional counsel or the HUD Ethics Law Division at (202) 708-3815.

Official Participation in Outside Conferences

HUD employees sometimes receive invitations to attend outside conferences, seminars, or similar activities in their official capacity. Some employees are even asked to par-



ticipate in such activities as speakers or panel members. Such participation can be beneficial to the Department by expanding the knowledge and skills of our employees, and by sharing HUD's goals, policies, programs, and expertise with interested groups.

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Counsel's Corner

by Richard A. Hauser



Early in his tenure at HUD, Secretary (then, Deputy Secretary) Jackson directed the Department to review all its program delegations of authority and to redraft, rescind, or reissue those that were out of date. An initial review found that delegations had failed to keep up with legislative and organizational changes, thereby causing command and control problems, often at critical times.

To facilitate the review and initiate the necessary changes, I established a task force headed by Camille Acevedo and Elliot Berke and made up princi-

pally of Honors Program legal interns. The group was tasked to coordinate the Department's review and assist the program offices in their process. While program office attorneys and staff performed the initial reviews, the task force ensured that the new or revised delegations were written and the delegations were in the Federal Register. The task force processed more than forty delegations to completion and worked on several others that were withdrawn or rescinded.

Delegations of Authority are the legal instruments that invest Department officials with the power to perform their official duties. Authority is delegated, usually beginning with the Secretary, to the official that has organizational responsibility to fulfill a specific task. Delegations sometimes may be re-delegated to others, depending on the

language in the original authority. As legislative changes affect the mission of the Department, authority is specifically granted to perform the tasks outlined in the legislation. When organizational changes take place in the Department, the authority to perform certain functions must be rescinded, then delegated to the proper authority. Good delegation of authority practices are essential to getting the job done.

The foresight of Secretary Jackson to get our Delegations of Authority in order has served the Department well and has avoided major distractions. The delegation process is unwieldy and is difficult to tackle head on. Our group did just that, and I want to thank the members of the task force for a job very well done. Your contributions to the Department are greatly appreciated.

Official Participation in Outside Conferences *(continued from page 4)*

As a general rule, HUD employees may attend (with supervisory approval) outside conferences or similar activities in their official capacity where the employees' attendance will be beneficial to the Department. Where the conference sponsor offers free or "reduced fee" attendance for Department attendees, this may be accepted in accordance with HUD's policy regarding "Acceptance of Free Attendance at Conferences and Widely Attended Gatherings." This policy is posted on the Ethics page of HUD's website.

Outside conferences may be sponsored by "for-profit" or "not-for-profit" organizations. Not-for-profit conferences typically

charge relatively low registration and attendance fees, which are set to cover the cost of the conference only, and often are sponsored by not-for-profit organizations or industry groups. In contrast, for-profit groups often charge substantial fees as a money-making strategy. Whether HUD employees should attend "for-profit" conferences should be determined by balancing the likely benefit to the Department against the price of the fees charged to attendees.

Department policy requires HUD supervisors to be especially cautious before agreeing to allow employees to participate as a speaker or panel member at for-profit conferences. As government officials, HUD employees who make presentations at such conferences are essentially helping private entities to make a profit by


charging attendees to hear public information that the Department should disseminate for free. As a result, prior to assigning employees to participate in events at which any registration fee will be charged, supervisors must determine that the Department has a substantial interest in reaching the audience, and document that the same audience cannot be reached without the Department's participation in the conference event. When the event is sponsored by a non-profit organization, and the registration fee is for materials and refreshments only, the test is less onerous but still must be satisfied.



A Few Reminders For Completing the Public Financial Disclosure Report

The Ethics Law Division strongly recommends that you always file your Public Financial Disclosure Report (SF-278) by the deadline. If you are an annual filer, the report is due May 16, 2004, and covers the period of January 1, 2003, to December 31, 2003. Annual filers who submit a report thirty days after the filing deadline or the last day of any filing extension period must pay a late filing fee of \$200. If you are not certain whether you are required to file a report, please contact the Ethics Law Division. When completing your report, please keep the following points in mind:

- ✓ Complete all parts of the report. If a particular part does not apply to your financial situation, please check the "none" box. Please do not write "N/A."
- ✓ Provide detailed responses. Please provide the complete name of all mutual funds, bonds, or other assets.
- ✓ Prepare your responses in a typewritten format. If you must submit a handwritten report, please ensure that all parts are legible.



Counsel's Farewell

As some of you already know, I will be leaving my position as HUD's General Counsel at the end of May. Before departing, I wanted to convey my admiration not only for everyone's hard work and dedication, but also for the earnest way that the men and women of HUD seek to carry out their duties in an honest and ethical manner. Shortly after I joined the Department, former Secretary Martinez called upon us all to "embrace a new sense of ethics and accountability" in the performance of our duties. Secretary Jackson has endorsed this theme as well, and together we have taken great strides. Among other things, the Department developed a set "core values" for the recipients of our grant aid programs, participated in the Fellows Program of the Council for Excellence in Government, and last year we reintroduced Department-wide annual ethics training for the first time in many years. I am extremely gratified at the extent to which integrity and ethical conduct have become paramount considerations throughout the entire Department. This dedication to honesty and accountability justifies the faith our fellow citizens have in the Department as an institution. As I leave HUD, it is my sincere hope that you will continue to administer HUD's programs with integrity.

Did You Hear. . .

. . . that Janet Rouamba retired from HUD in April 2004. Ms. Rouamba started her career at HUD in July 1969, in the Office of General Counsel. After the establishment of the Ethics in Government Act of 1978, Ms. Rouamba was one of the very first ethics staff to review both public and confidential financial disclosure reports filed by HUD employees. In 1989, she left the Office of General Counsel and was hired as the Paralegal and Chief Docket Clerk for the Office of Administrative Law Judges. She served in that position until her retirement in April 2004. The Office of General Counsel extends thanks to Ms. Rouamba for her dedicated service and wishes her well in her future endeavors.



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